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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,566	01/11/2001	Allan Stuart Algazi	1071	9680
23720 7590 01/04/2007 WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			EXAMINER PLUCINSKI, JAMISUE A	
			ART UNIT	PAPER NUMBER
			3629	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/04/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/759,566

Applicant(s)

ALGAZI, ALLAN STUART

Examiner

Jamisia A. Plucinski

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 42-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 42-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20061113</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to Amendment filed 10/17/06.
2. Claims 1-12, 42-53 pending, Claims 13-41 Cancelled.

Election/Restrictions

Claim 1 is allowable. The election of species requirement between the independent species of Claims 3-5 and the Independent species in Claims 6-10, as set forth in the Office action mailed on 2/18/04, has been reconsidered in view of the allowability of the generic claim in which these claims depend from, pursuant to MPEP § 821.04(a). Claims 4-9 are rejoined with the case and are no longer withdrawn from consideration because the claim(s) are dependent on allowable generic Claim 1.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 46-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Berson (6,802,005).

Art Unit: 3629

5. With respect to Claim 46: Berson discloses the use of an apparatus (it should be noted that the limitation “for delivering goods” is considered to be intended use of the apparatus, which is held to structural limitations of the actual apparatus), comprising:

- a. A scanner operable to scan a two-dimensional bar code, which is encoded with previously provided biometric information (reference number 62, Column 4, lines 31-38);
- b. A collector operable to collect a user’s current biometric information (reference numeral 70, Column 4, lines 38-44);
- c. A comparator operable to compare the current biometric information and the previously provided biometric information to determine if the two match (Column 4, lines 45-51).

6. With respect to Claim 47: Berson discloses the use of the biometric information being a thumbprint, which the examiner considers to be a fingerprint (column 4, lines 38-44).

7. With respect to Claim 48 and 50: Berson discloses that other sensing techniques for biometric data can be hand geometry and facial features (Column 2, lines 55-60).

8. With respect to Claim 52: Berson discloses the two-dimensional barcode to be a PDF-417 barcode (Column 4, lines 16-25).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3629

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berson (6,802,005).

12. Berson, as disclosed above, for Claims 46-48, disclose the use of collecting biometric data, including thumbprint, hand geometry and facial recognition, however fails to disclose the biometric data can be voice recognition or signature data. The examiner takes official notice that it is old and well known without the business arts that voice recognition and signature data are equivalent types of biometric data to thumbprint data that is collected to verify a person is who they say they are. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to replace the thumbprint scanner, with voice recognition or a signature recognition, due to the fact that it is well known in the art that recognized equivalents in the art, and the selection of any of these known equivalents to be voice recognition or signature recognition would be within the level of ordinary skill in the art.

Double Patenting

13. Claims 1-12 and 42-53 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,2,7-11,14,19-23,28-35 and 37 of copending Application No. 10/033.042. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims is that the barcode is sent to the user electronically. The claims of application '042 further state that the method/apparatus scans a printed barcode, which what is claimed in the instant application. It is old and well known in the art the use of order confirmation or shipping confirmations are sent to the user electronically at the time of ordering/shipping.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

14. Claims 1-12, 42-45 and 53 are directed to allowable subject matter, however are now rejected under double patenting.

Response to Arguments

15. Applicant's arguments with respect to the Rechtenwald reference, are moot in view of the new rejection. The applicant has added a new set of apparatus claims, which structurally only claims a scanner, a collector and a comparator. As stated above, the claim limitations drawn to the apparatus being used "for" delivering goods, is considered intended use of the apparatus.

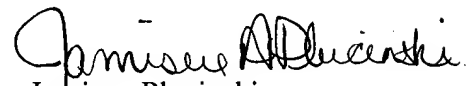
Art Unit: 3629

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jamisue Plucinski
Patent Examiner
Art Unit 3629